



The City of Albuquerque requires any Shared Active Transportation Program Operator to be registered and permitted in order to operate in the public right-of-way, pursuant to Part 8-3-5 of the Code of Ordinances (O-18-29, enactment no. O-2018-021). This Shared Active Transportation Permit and Agreement must be completed, agreed to, and submitted to the City Planning Department for review. The City Planning Director (or his/her designee) will review the completed application and determine whether it meets the City’s minimum requirements for permitting and operation. The Planning Director shall, in his/her sole discretion, either approve or deny the Permit. Where the Permit is denied, an explanation of the decision shall be provided.

It is unlawful for any Shared Active Transportation Program Operator to offer or manage Small Vehicles except in conformance with this Permit and the requirements of Part 8-3-5 of the Code of Ordinances.

**Applicant Information**

Operator:	Website:
Business Address:	Mailing Address
City, State, Zip:	City, State, Zip
Primary Contact:	Phone
Email:	
Local Contact:	Phone:
Email:	

**Application Information:**

Proposed Number of Small Vehicles:	Vehicle Type:
Proposed Number of Stations or Drop Zones:	

**Application Checklist**

The following must be submitted to the City in order for this Permit Application to be considered complete.

- Operating Permit and Agreement, completed in full and signed by a representative of the Operator.
- Application Fee. See Section VIII of this Permit for a fee schedule.
- Operator’s proof of identity, Articles of Incorporation, Partnership agreement, LLC documents, etc.
- Operator’s proof of active City Business Permit.
- Operator’s proof of insurance. See Section XV of this Permit and Agreement for insurance requirements.
- List of Small Vehicles that will be operating in the city, identified by a unique identification number.
- Proof that all Small Vehicles to be deployed comply with applicable safety standards. See Section IX.F of this Permit for safety standards.
- List, map (KML, Shapefile, CSV, or other GIS data), and scaled diagrams (if applicable) of any proposed Station. See Section X of this Permit for Station requirements.
- Proof of private agreement with any property owner on whose private property any Station will be located.
- Documentation of how data will be reported to the City. See Section XIV of this Permit for data and reporting requirements.
- Description of any equity-focused program, if applicable.



## Shared Active Transportation Program Operating Permit and Agreement

### I. Definitions

For the purposes of this Permit and Agreement (“Permit”), the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific article or paragraph herein. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. **Public Right-of-way:** The total area of land deeded, reserved by plat or otherwise acquired by the city primarily for the use of the public for purposes of vehicular and/or pedestrian traffic. The public right-of-way does not include federal interstate highways, state highways, or routes under the jurisdiction of the New Mexico Department of Transportation and does not include any privately owned roadway or roadways owned by a separate jurisdiction within the city, including CNM and UNM.
- B. **Shared Active Transportation:** A network or system of small vehicles, placed in the public right-of-way and for rent in short time increments, that provides increased mobility options over short distances in urban areas.
- C. **Shared Active Transportation Operator (“Operator”):** Any private entity that extends the use, rental, or service of Small Vehicles to its customers.
- D. **Shared Active Transportation Station (“Station”):** Permitted stations placed throughout the right-of-way and adjacent public and private property where customers pick up and return small vehicles. For the purposes of this Permit, unless indicated otherwise, this term includes Drop Zones for shared e-scooter programs.
- E. **Small Vehicle:** Bicycles, scooters, e-bikes, e-scooters, and other small, wheeled vehicles designed specifically for shared-use by no more than two individuals at a time, and are deployed by private Shared Active Transportation Program Operators. Users of small vehicles have the same rights as operators of bicycles in the use of streets, highways, roadways, and sidewalks, except as otherwise specifically provided herein.

### II. Scope

Subject to the terms and conditions of this Permit, the City of Albuquerque (“City”) permits \_\_\_\_\_ (“Operator”) to operate, maintain, repair, replace, and remove Small Vehicles on or from City Property, including the public right-of-way, as more particularly shown on the maps, drawings, and other documents which are attached hereto and made a part of this Permit. This Permit allows the Operator to conduct a program where they rent Small Vehicles for use within the City of Albuquerque. This Permit does not allow the Operator to install and/or attach any infrastructure, attachment, equipment, or any other personal property to any infrastructure, including but not limited to utility poles and street lights, belonging now or in the future to the City or any third-party utility without prior approval from the City.

Other jurisdictions within the City of Albuquerque limits, including other municipalities, counties, or institutions may have additional requirements or limitations for Shared Active Transportation Programs and/or the operation of Small Vehicles within their jurisdiction. The Operator is responsible for knowing and following these regulations, as applicable.

### III. Terms

- A. This Permit will remain in effect for a period of one (1) year from the date of the execution of the Permit by the City, (hereinafter referred to as the “Term”), unless terminated and/or revoked pursuant to Section V of this Permit.
- B. The Operator may renew and extend this Permit annually for a total of five (5) years (therefore, 4 renewals) by notifying the City in writing no later than sixty (60) days prior to the expiration of the then-current Term of this Permit.
- C. The City maintains the right to review the Operator’s compliance at any time.



- D. The Operator shall submit in writing any requested revisions to this Permit, including but not limited to increasing the number of Small Vehicles or adding, removing, or moving Stations. Such changes shall not be implemented without approval from the City.

#### IV. Permit and Approvals

The City is entering into this Permit in its capacity as a property owner and in its capacity as a regulatory government agency. Nothing in this Permit shall limit in any way the Operator's or Operator's agents' obligations to obtain any required regulatory approvals from the City or any other governmental authority, board, council, or commission that may have proprietary or regulatory authority over public rights-of-way and real property where Operator's Small Vehicles may travel and/or occupy. By entering into this Permit, the City is not modifying or limiting in any way the Operator's obligations to cause the public rights-of-way or City real property to be used or occupied in accordance with all laws and any provisions as provided herein.

#### V. Termination

This Permit may be revoked or terminated under any of the following conditions:

- A. The City may revoke and terminate this Permit if the Operator fails to perform on or comply with any material term, condition, or agreement of this Permit, subject to the Operator's ability to cure such default within ten (10) days after receipt of written notice of such failure from the City unless a shorter period to cure is necessitated by public health and safety. However, no such failure will be deemed to exist provided that the Operator cures such default within the noticed period to cure and provided that, if such period to cure is extended by mutual agreement, such efforts to cure are prosecuted diligently to completion.
- B. The City may revoke and terminate this Permit in part or in its entirety at any time for any reason or no reason upon advanced written notice at least sixty (60) days in advance of termination of any or all of the Station locations listed in this Permit or termination of the entire Permit.
- C. The Operator may terminate this Permit for any reason or no reason with no less than 30 days written notice to City and with such termination, Operator and City will have no further rights, obligations or liabilities to one another under this Permit except for those obligations and liabilities which survive termination, including the requirements below about restoring the public right-of-way and any City real property to the condition it was in prior to the installation of Stations or other infrastructure.
- D. An order of a court of competent jurisdiction may terminate this Permit.

Should the City or Operator wish to remove one or more Stations as listed in the attachments to this Permit, both parties may agree in writing to do so without terminating the whole of this Permit.

Upon termination of this Permit, the Operator shall restore any public right-of-way or City real property as nearly as possible to the condition it was in prior to the installation of Stations or other infrastructure, all at the sole expense of the Operator and to the satisfaction of City.

If, after termination and within twenty (20) days after being directed to do so by the City, the Operator fails to remove any of the Operator's property from the public right-of-way and restore the right-of-way or City real property, the City may perform the work and the Operator shall reimburse the City for the costs of such work within thirty (30) days after the City submits a bill to the Operator.

Termination of this Permit for any reason shall not release the Operator from any liability or obligation relating to the construction, installation, operation, maintenance, repair, or removal of the Operator's property or any other term of this Permit.



**VI. Use**

The Operator shall provide Small Vehicles for rent to the public in accordance with this Permit, including the following:

- A. The Operator shall not use this Permit for any purpose other than those stated and granted in this Permit without prior written approval of the City.
- B. The Operator shall operate and maintain all Small Vehicles and Stations in a safe, sanitary, and operable condition.
- C. The Operator shall not add any additional Small Vehicles or Stations without prior written approval of the City, pursuant to Section III of this Permit.

**VII. Local Contact**

- A. The Operator shall provide the contact information of a locally based manager or operations staff member who can respond to City requests, emergencies, or other issues at any time.
- B. If the name or contact information of this local contact changes, the Operator shall provide the City with updated information within 24 hours.

**VIII. Permit Fees**

With the exception of publicly funded Shared Active Transportation Programs, the Operator shall remit the following fees, as detailed in the Table below, to the City.

- A. Application Fee, to be paid upon application submission. A Renewal Fee must be paid annually for a renewal of the Permit pursuant to Section III of this Permit.
- B. Permit Fee, to be paid prior to the Operator’s launch date.
- C. Station Fee, for any Station authorized by the City within any City-owned property, public space, or right-of-way, to be paid prior to installation of any Station. Station Fees will be prorated for additional Stations that have been approved by the City after this Permit is approved.
- D. Daily fee per Small Vehicle in service, to be determined based on the Operator’s deployed fleet.
- E. Fees for improperly parked Small Vehicles and for removal of Small Vehicles by City Staff.

<b>Fee Schedule for Shared Active Transportation Programs</b>		
<b>Fee Type</b>	<b>Payment Schedule</b>	<b>Amount</b>
Application Fee	Annual	\$150 – first year \$100 – subsequent four (4) years
Permit Fee	Annual	\$12,000
Station Fee	Annual	\$2.50 / square foot
Daily Small Vehicle Fee	Quarterly, billed by the City*	\$1 / Small Vehicle / day
Failure to Remove Damaged, Abandoned, or Improperly Parked Small Vehicle Fee	Quarterly, billed by the City*	\$50 / day
Removal and Storage Fee	Quarterly, billed by the City*	\$75 for relocation or removal \$50 / day for storage

\* Payment for fees billed by the City must be paid within thirty (30) calendar days of the billing date.

**IX. Fleet**

- A. The City has the right to limit the number of Small Vehicles that the Operator may have operating in their fleet at any time.
- B. The Operator may reduce the number of Small Vehicles in operation without prior notice to the City.
- C. The Operator shall ensure that each Small Vehicle is in working order, well-maintained, and clean.



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- D. The Operator shall affix its logo and a clearly visible unique, permanent identification number to each of its Small Vehicles in the City and shall not allow other logos or advertisements to appear on any of its Small Vehicles.
- E. The Operator shall provide, at minimum, a customer service phone number on each Small Vehicle, with information about how to report a damaged or incorrectly parked Small Vehicle.
- F. The Operator shall certify that all Small Vehicles deployed comply with safety standards established by the Consumer Product Safety Commission or the American Society for Testing and Materials, and all other applicable federal, state, and city safety standards.
- G. Electric assist for any Small Vehicle within the fleet may not exceed 15 miles per hour.

### X. Parking

- A. Small Vehicles must be parked at an approved Station, a bicycle rack, in a landscaping/buffer area (as defined in §6-5-5-4 of the Code of Ordinances), or at any other permanent fixture meant for the placement of Small Vehicles that does not violate the provisions of Section B below.
- B. Small Vehicles shall not be parked in any of the following locations:
  - 1. Any location that impedes the normal and reasonable movement of pedestrian or other traffic. A pedestrian travel space to a width of at least four (4) feet must be maintained on all sidewalks.
  - 2. Any location that impedes access to entrances to private property or driveways.
  - 3. Any location that impedes access to any bike share station.
  - 4. Any location that impedes access to an intersection approach, particularly access to pedestrian crossing buttons and curb ramps.
  - 5. Any location that impedes access to a bus stop or station, including on ART stations, or impedes any individual's ability to board or alight from a City transit vehicle.
  - 6. Any location that impedes access in any way to a required ADA parking space.
  - 7. Otherwise in accordance with the New Mexico Vehicle Code and the City Municipal Code.
- C. The Operator shall provide Stations for the distribution of Small Vehicles and/or where users can park their Small Vehicles.
  - 1. Stations must be located in areas that meet the requirements of Subsections A and B of this Section, above.
  - 2. The Operator shall provide a list and detailed maps of all proposed Stations as part of this Permit application.
  - 3. Stations may be marked physically and/or designated in an online application for users. Regardless of how they are indicated, such areas must be approved by the City if they are designated for parking multiple Small Vehicles.
  - 4. Stations may be marked with the Operator's name and/or logo. For Small Vehicle Share Programs that involve e-scooters, the Operator shall allow co-location of e-scooters owned by another Shared Active Transportation Program Operator in their designated drop zones.
  - 5. The Operator shall submit any proposed Stations or any changes to any existing Station in writing to the City and obtain written approval from the City before making such changes.
  - 6. The City may deny a Station location for any reason, including for reasons of present and future municipal purposes or for safety reasons.
  - 7. The City reserves the right to eliminate, either permanently or temporarily, a Station at any time for present and future municipal or safety reasons. The Operator shall have sixty (60) days to remove the Station after notification from the City. If a Station presents an emergency situation, the City may require the Operator to remove a Station within a 24-hour period. If the Operator is unable or unwilling to remove the Station, the City may perform the work and the Operator shall reimburse the City for the costs of such work within thirty (30) days after the City submits a bill to the Operator.



## XI. Removal of Small Vehicles

- A. Every Small Vehicle must have the ability to be remotely disabled in the case that it is reported to be damaged or unsafe for use.
- B. The Operator shall remove damaged, abandoned, or improperly parked Small Vehicles in accordance with local law and without prior notice from the City.
- C. The City may notify the Operator of damaged, abandoned, or improperly parked Small Vehicles. After such notification, the Operator shall remove that Small Vehicle within 24 hours. Failure to remove damaged, abandoned, or improperly placed Small Vehicles shall result in a fine of at least \$50 per small vehicle per day.
- D. The Operator shall, upon request by the City, temporarily remove all Small Vehicles from specific locations in the event of emergencies, special events, or regular street maintenance within 24 hours of the request.
- E. The City shall have the right, but no obligation, to remove any abandoned, unattended, or improperly placed Small Vehicle that is, in the sole opinion of the City, a safety hazard or an impediment to access ensured by the Americans with Disabilities Act. The City may charge the Operator a removal and storage fee for any Small Vehicle removed for these reasons.

## XII. Advertising

- A. The Operator shall not advertise or publish the City's participation in or endorsement of the program in Operator's marketing or promotional materials without the City's prior written consent.
- B. The Operator shall not sell or display of third-party advertising on any Station.

## XIII. Education

- A. The Operator shall use all of its communication platforms to ensure that their users are aware of existing regulations about use of Small Vehicles, in particular Part 8-3-3 of the City Code of Ordinances, which pertains to bicycles and, by definition, to Small Vehicles.
- B. The Operator shall use all of its communication platforms to educate users on safe and proper Small Vehicle operation and parking.

## XIV. Data and Reporting

- A. The Operator shall provide a publicly accessible application program interface that shows, at a minimum, the current location of any Small Vehicles available for rental at all times.
- B. The Operator shall provide new users an in-app, email, and text notice upon initial user registration outlining that a variety of data, including location data and individual trips taken, is collected and used for service, operational, or marketing purposes, if applicable. The notice shall direct users to a full privacy policy.
- C. The Operator shall provide to the City a monthly report that provides, at a minimum, the following data for the previous month:
  - 1. Unique permanent identification numbers for Small Vehicles that were in operation during the month.
  - 2. Number of rides taken.
  - 3. Number of Small Vehicles in service.
  - 4. Number of rides per Small Vehicle per day.
  - 5. Anonymized trip data that includes the origin and destination, trip duration, and date and time of all trips taken.
  - 6. Safety reports involving any of the Operator's Small Vehicles.
  - 7. Aggregated repair information for any of the Operator's Small Vehicles.
- D. The Operator shall respond to additional data requests from the City. The City may request aggregate data on system use and aspects of system operation, including but not limited to parking complaints, damaged or lost



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Small Vehicles, and reported crashes. In the case of crashes or incidents, the City may request specific data for the Small Vehicle involved, including user data and Small Vehicle location, movement, and speed data.

### XV. Insurance

- A. The Operator shall procure and keep in effect at all times during the Term, at Operator's cost, insurance in the following amounts and coverages (see also Section B below for additional information about required insurance):
1. Commercial General Liability Insurance coverage and excess coverage of five (5) million dollars per occurrence.
  2. Commercial Automobile Liability Insurance with limit not less than one (1) million dollars each occurrence combined single limit for bodily injury and property damage, including owned, non-owned, and hired vehicles.
  3. Workers' Compensation Insurance coverage for all employees involved in operations pertaining to this Permit including Employer's Liability Insurance coverage of at least one hundred thousand (100,000) dollars per occurrence. Operator agrees to comply at all times with the provisions of the Workers' Compensation laws of the City.
- B. The Commercial General Liability and Commercial Automobile Liability Insurance limits may be met by a combination of primary and excess or umbrella insurance and the policies shall be endorsed to provide the following:
1. Name as additional insured the City of Albuquerque.
  2. That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits. Such policies shall also provide for severability of interests and that an act or omission of one of the named insured which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.
  3. All insurance policies required to be maintained by Operator hereunder shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, except for non-payment of premium to both Operator and City. The Operator shall provide notice to the City of any cancellation, including intended non-renewal, reduction in coverage, or cancellation for non-payment of premium within two (2) business days upon receipt of any such notice. Notice to City shall be mailed to City of Albuquerque, Risk Manager, Risk Management Division, P.O. Box 1293, Albuquerque, New Mexico, 87103 and to City of Albuquerque, Real Property Division, P.O. Box 1293, Albuquerque, New Mexico, 87103.
  4. Should any of the required insurance be provided under a claims-made form, the Operator shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Permit, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Permit, such claims shall be covered by such claims-made policies.
  5. Operator shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form reasonably satisfactory to City, evidencing the coverage required hereunder, on or before the Commencement Date and Operator shall provide City with certificates thereafter promptly upon City's request. In addition, Operator shall make available to the City for examination upon City's request all policies of insurance required under this Permit. All such examinations shall occur at times and locations mutually acceptable to Operator and City. The City shall promptly return such policies upon the City's completion of its examination.
  6. Compliance, by Operator's Contractor, with the provisions of this Section shall in no way relieve or decrease Operator's liability under Section XIV (Indemnity), or any other provision of this Permit.



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7. Notwithstanding anything to the contrary in this Permit, City may elect, in City's sole and absolute discretion, to terminate this Permit if Operator allows any required insurance coverage to lapse by: (i) providing Operator written notice of such lapse; and (ii) immediately providing written notice of termination if Operator fails to reinstate the lapsed coverage within three (3) business days of City's notice of such default.
8. Operator shall carry its insurance with a good and solvent insurance company or companies, acceptable to City, rated A-VII or better by A.M. Best, and authorized to do business in New Mexico.
9. Operator agrees to deliver certificates of its insurance on a standard ACORD form to City as soon as practicable after the placing of the required insurance and periodically thereafter, but no less than annually; and, in addition, provide policies and endorsements for inspection upon request.
10. All insurance must be in effect before City will authorize Operator to install the stations and deliver any Small Vehicles to any Stations and shall remain in force until all Stations and the Small Vehicles are removed from any City Property and the Permit has been terminated. Operator is responsible for determining whether the above minimum insurance coverages are adequate to protect its interest. The above minimum coverages shall not constitute limitations upon Operator's liability.
11. Operator may propose and the City may accept an alternative insurance program, if that program provides equivalent protections to the City as the insurance requirements set out in this Section, which shall be determined by the City in its sole and exclusive discretion. The City's acceptance of an alternate insurance program shall not effect an implied waiver or amendment of any requirement of this Permit. Any amendment of these insurance requirements must be set out in writing as an Addendum and Modification of this Permit, executed in the same manner as this Permit.

## XVI. Indemnification and Damages

- A. The Operator shall, on behalf of itself and its successors and assigns, indemnify, defend, and hold harmless ("Indemnify") the City, its Agents and Invitees, and their respective heirs, legal representatives, successors, and assigns (individually and collectively, the "Indemnified Parties") from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from any of the following:
  1. Injury to or death of a person or damage received or sustained by any person, persons, or property arising out of or resulting from the services performed by the Operator or in connection with the Operator's services under this Permit or by reason of any asserted act or omission, neglect, or misconduct of the Operator or Operator's agents or employees or any subcontractor or its agents or employees.
  2. Any default by Operator in the observation or performance of any of the terms, covenants, or conditions of this Permit to be observed or performed on Operator's part.
  3. The use, occupancy, or manner of use or occupancy of the public right-of-way or public property by the Operator, its agents and employees, invitees, users, or any person or entity claiming through or under any of them.
  4. The condition of or any occurrence on the public right-of-way or public property from any cause attributable to the events described in clauses 1, 2, or 3 above.
  5. Any acts, omissions, or negligence of the Operator, its agents, or invitees, or users in, on, or about the public right-of-way or public property; all regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Permit and further, except to the extent that such claim is caused by the willful misconduct or active negligence of the City. The foregoing Indemnity shall also include, without



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limitation, reasonable fees of attorneys, consultants, experts, and related costs and the City's costs of investigating any claim. The Operator specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which actually or potentially falls within this indemnity provision, even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Operator by the City and continues at all times thereafter.

- B. Notwithstanding the foregoing, the Operator's indemnity shall not apply to any liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses caused by the negligence or willful misconduct. The liability of the City in all cases shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, §41-4-1 et seq., NMSA 1978, as amended.
- C. The Operator shall include the following language in its end user agreement: "The user understands, and agrees, that the use of Small Vehicles is an inherently dangerous activity. Roadways, streets, alleys, sidewalks, paths, and trails may have dangerous conditions adverse to the user. The user assumes all responsibilities associated with travel conditions while operating a Small Vehicle."
- D. The Operator shall repair or pay for all actual damages done to any City Property or City improvements or to the improvements of the City's tenants or utility franchisees in the public right-of-way caused by Operator's operation.

### XVII. Records

- A. The Operator shall be subject to scheduled and unscheduled monitoring reviews to ensure compliance with all applicable requirements. The City shall maintain records of all actions taken pursuant to this Permit and shall make records available to Operator for inspection, if requested.
- B. The City and Operator shall use, restrict, safeguard, and dispose of all information related to the Permit, in accordance with all relevant state and federal and local statutes, regulations, and policies.
- C. The Operator understands and shall abide by all provisions of the Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994.

### XVIII. Assignment

No transfer or assignment of the Permit, or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by the City.

### XIX. Miscellaneous

- A. The Operator and any of its contractors shall comply with all federal, state, and local laws, ordinances, regulations, and rules and will not discriminate illegally against any person. The Operator's attention is specifically drawn to 62-14-1 et. seq. NMSA (1978 Comp., 1984 Repl. Pamphlet) regarding excavating damage pipelines and underground utility lines.
- B. Construction and Severability. If any part of this Permit becomes invalid or unenforceable, the remainder of this Permit will remain valid and enforceable if the remainder of the Permit is reasonably capable of completion, provided that the remainder of the Permit does not materially prejudice either the City or the Operator in its respective rights and obligations contained in the valid covenants, conditions, or provision of this Permit.
- C. Every notice given under this Permit will be effective only if it is in writing and delivered (a) in person, (b) by courier, (c) by reputable overnight courier guaranteeing next business day delivery, or (d) sent postage prepaid by United States certified mail, return receipt requested, directed to the other party at its address provided below, or such other address as either party may designate by notice given from time to time in accordance with this Section 25. Notices will be effective (i) in the case of personal or courier or overnight courier delivery, on the date of delivery or refusal to accept delivery as evidenced by a written receipt signed on behalf of the receiving party,



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(ii) if by overnight courier, one (1) business day after the deposit of the notice with all delivery charges prepaid, and (iii) in the case of certified mail, the earlier of the date receipt is acknowledged or refused on the return receipt for such notice or three (3) business days after the date of posting by the United States Post Office. The notice addresses for Operator and City are as follows:

For Operator:

Attention: \_\_\_\_\_

Street Address: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

For City:

Planning Director  
Planning Department  
600 2nd St. NW  
Albuquerque, NM 87102

Copies of any notices to the City must also be given to:

City of Albuquerque  
Real Property Division  
P.O. Box 1293  
Albuquerque, NM 87103

City of Albuquerque  
Chief Administrative Officer  
One Civic Plaza NW  
P.O. Box 1293  
Albuquerque, NM 87103

- D. Conflict of Interest. Upon execution of this Permit, or within five (5) days following the acquisition of any interest in this Permit during the term of this Permit, Operator shall disclose in writing to City whether any City Councilor, officer or employee of City has acquired or hereafter acquires any direct, indirect, legal or beneficial interest in Operator or in any contract, lease, license, or agreement between City and Operator, or in any franchise, concession, right, or privilege of any nature granted by City to Operator in this Permit or otherwise.
- E. Fair Dealing. Operator covenants and warrants that the only entity interested in this Permit is named in this Permit and that no other person or firm has any interest in this Permit, and this Permit is entered into by Operator without collusion on the part of Operator with any person or firm, without fraud and in good faith. Operator also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Operator, will be, offered or given by Operator or any agent or representative of Operator to any officer or employee of City with a view towards securing this Operator or for securing more favorable treatment with respect to making any determinations with respect to performing this Permit.
- F. Board of Ethics and Campaign Practices. Operator agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Permit whenever such records or information are within Operator's custody, are germane to an investigation authorized by the Board, and are requested by the Board. Operator further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. If required by applicable law, Operator agrees to require that all subcontractors employed by Operator for services performed for this Permit shall agree to comply with the provisions of this subsection.



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Operator and its subcontractors shall not be compensated under this Permit for its time or any costs incurred in complying with this Subsection F.

- G. **Discrimination prohibited.** In the operation and use of the City right of way, the Operator shall not on the grounds of race, color, religion, sexual orientation, sexual preference, national origin or ancestry, or age discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21 and 23, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Operator shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, sexual preference, national origin or ancestry, age, or disability. Such action will include, but not be limited to: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and disciplinary actions and grievances. The Operator agrees to post in conspicuous places available to employees, and applicants for employment, notice setting forth the provisions of this non-discrimination clause.
- H. **Government Powers.** Subject to state and federal law, nothing in this Permit shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the City in the right of way or waiving or limiting the City's control over the management, operation or maintenance of the right of way, except as specifically provided in this Permit or as impairing or defining governmental rights or the police powers of the City.
- I. **Choice of Law, Venue.** This Permit shall be governed by and construed under and in accordance with the laws of the State of New Mexico without reference to its conflict of law principles. The parties agree that jurisdiction for any suit, action, or proceeding arising out of this Permit may be Bernalillo County, New Mexico. The parties further acknowledge that they have fully and fairly bargained for the terms of this Subsection XIX. The provisions of this Subsection XIX shall survive the expiration or termination of this Permit.
- J. **Exhibits.** All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Permit, including but not limited to the exhibits referred to in this Permit, are hereby incorporated into this Permit by reference and are made part hereof as though set forth in full in this Permit to the extent they are consistent with the terms and conditions of this Permit.
- K. **No Waiver.** The waiver by City of any breach of any term, covenant or condition contained in this Permit shall not be deemed to be a waiver thereof on any subsequent occasion. City shall not be deemed to have waived any term, covenant, or condition of this Permit unless City has signed a written waiver waiving the term, covenant, or condition.
- L. **Attorneys' Fees.** If either party to this Permit institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Permit, for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, each party shall be responsible for its own attorney's fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees.
- M. **Utilities.** At all times, Operator shall be responsible to provide Operator's utilities for any and all Stations in the right-of-way.
- N. **Further Actions.** At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purpose of this Permit.
- O. **Counterparts.** The Permit may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. If so executed, each such counterpart of this Permit is to be deemed an original for all purposes and all such counterparts will collectively constitute one agreement, but in the making of proof of this Permit, it will not be necessary to produce or account for more than one such counterpart.



**City of Albuquerque  
Planning Department**

**Shared Active Transportation Program  
Permit and Agreement**

Revised 4/15/2019

- P. Public Document. City is a municipal corporation under the laws of the State of New Mexico. City and Operator acknowledge that this Permit is subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and is a “public record” within the meaning of said Act.
- Q. Representation. Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this Permit. Accordingly, each party hereto represents to the other that it has read and understood the terms of this Permit, and the consequences of executing this Permit and that except as expressly set forth herein, no representations have been made by either party to induce the other party to execute this Permit.
- R. Approval Required. This Permit shall not become effective or binding until approved and signed by the City Planning Director or their designee.

IN WITNESS WHEREOF, the Operator has signed this Permit and Agreement as of the date indicated by the Operator’s signature, and the Permit is effective after approval by the City and only upon the signature of the Director of the City Planning Department or his/her authorized designee.

\_\_\_\_\_  
Signature, Operator’s Representative

\_\_\_\_\_  
Signature, City Representative

\_\_\_\_\_  
Printed Name, Operator’s Representative

\_\_\_\_\_  
Printed Name, City Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature, Operator’s Representative  
(additional if needed)

\_\_\_\_\_  
Printed Name, Operator’s Representative

\_\_\_\_\_  
Date